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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, FEBRUARY 7, 2002

APPLICATION OF

CHICKAHOMINY POWER, LLC

CASE NO. PUE010659

For authority to construct
and operate an electric generating
facility in Charles City County

ORDER FOR NOTICE AND HEARING

On January 4, 2002, Chickahominy Power, LLC ("Chickahominy" or "Company"), filed with the Clerk of the State Corporation Commission ("Commission") its Application of Chickahominy Power, LLC, For a Certificate to Construct and Operate an Electric Generating Facility Pursuant to Va. Code § 56-580 D, For a Waiver of or Exemption From Certain Commission Information Requirements, and for Other and Further Relief (hereinafter "Company Application").¹ According to the Company Application,

¹ The Company Application filed on January 4, 2002, was assigned Document Control No. 020110049. As noted in that document, at 3-4, Chickahominy had filed with the Clerk an application, supporting attachments, testimony, and exhibits for the same facility on November 21, 2001, and that filing was collectively assigned Document Control No. 0111130139. The Company requests that the materials filed in November be transferred to this case.

To maintain our system of records as entered in our automated Case Management System, the Commission will not physically transfer the documents in this proceeding. The Commission will consider the Company Application filed on January 4, 2002, Document Control No. 020110049, to replace the application included in the materials filed on November 21, 2001. In this Order, we refer to the Company Application filed on January 4, 2002, and the Company Application Attachment 1 included in the November 21, 2001 filing. The Commission deems this matter to be filed in accordance with, and governed by, our Order Adopting Rules and Prescribing Additional Notice of December 14, 2001, in In re: Amending Filing Requirements for Applications to

at 3, Chickahominy proposes to construct and operate a simple-cycle generation facility in Charles City County. The location of the proposed facility is described in the public notice prescribed in ordering paragraph (14) of this Order. The proposed location for the facility is adjacent to a natural gas pipeline and electric transmission facilities, which will be connected to the generating facility.

The facility would consist of four combustion turbines with total nominal rating of approximately 665 MW and associated equipment. The Company proposes to use primarily natural gas as fuel, but the facility could also use Number 2 fuel oil.

(Company Application at 3, 8.) Chickahominy proposes to start grading and preparing the proposed site by April 1, 2002. Commercial operation would commence in the third quarter of 2003. (Id. at 11-12; Company Application Attach. 1 at 12-13.)

The facility would operate as a merchant plant. It would not make direct retail sales or provide retail electric service to end users in Virginia. (Company Application at 10.)

As provided by the Commission's Filing Requirements in Support of Applications for Authority to Construct and Operate an Electric Generating Facility (hereinafter "Filing Requirements"), 20 VAC 5-302-10, *Applicability and scope*, and

the Rules of Practice and Procedure (hereinafter "Rules of Practice"), 20 VAC 5-20-170, *Confidential information*, the Company filed with the Clerk confidential information under seal on January 4, 2002. Accompanying the confidential material was a Motion of Chickahominy Power, LLC, for a Protective Ruling and Additional Protective Treatment.

As required by the Filing Requirements, 20 VAC 5-302-20, *General information, electric generating facility information and documents to be included in the application*, Chickahominy also filed on January 4, 2002, a copy of its letter notifying the local gas distribution company, Virginia Natural Gas, Inc., of its application.

The Commission finds that the application is complete under the Filing Requirements and that it should be docketed. We further find that a public hearing should be held on the application. By this Order, we will establish a schedule and assign this matter to a hearing examiner. The hearing examiner will consider the motion for protective ruling and enter any appropriate rulings.

Chickahominy raises an issue of first impression under the law in effect on and after January 1, 2002. As discussed in our Order Adopting Rules and Prescribing Additional Notice of December 14, 2001, in In re: Amending Filing Requirements for Applications to Construct and Operate Electric Generating

Facilities, Case No. PUE010313 (Document Control No. 011220335), at 2, the Commission has determined that §§ 56-234.3² and 56-265.2³ of the Code of Virginia have been supplanted by § 56-580 D of the Virginia Electric Utility Restructuring Act, Chapter 23 (§ 56-576 et seq.) of Title 56 of the Code of Virginia ("Restructuring Act"). The supplanted provisions, read together, required public utilities to secure Commission approval in advance of construction or acquisition of generating facilities. Commission permission for construction and operation of generating facilities continues to be required, but no comparable prohibition on activity in advance of approval is

² § 56-234.3. Approval of expenditures for and monitoring of new generation facilities and projected operation programs of electric utilities.

Prior to construction or financial commitments therefor, any electric utility subject to the jurisdiction of the State Corporation Commission intending to construct any new generation facility capable of producing 100 megawatts or more of electric energy shall submit to the State Corporation Commission a petition setting forth the nature of the proposed construction and the necessity therefor The Commission shall review the petition . . . and determine whether the proposed improvements are necessary. . . .

³ § 56-265.2. Certificate of convenience and necessity required for acquisition, etc., of new facilities.

A. It shall be unlawful for any public utility to construct, enlarge or acquire, by lease or otherwise, any facilities for use in public utility service . . . without first having obtained a certificate from the Commission Any certificate required by this section shall be issued by the Commission only after opportunity for a hearing and after due notice to interested parties.

found in § 56-580 D or any other provision of the Restructuring Act⁴.

As noted previously, the Company expects to commence site preparation in April 2002. While the schedule we establish in this Order provides for expeditious consideration of the application, the Commission can not discharge by April 1 its duties to provide notice to interested persons and to consider this application and its impact. Chickahominy anticipated that the Commission might not take final action on the application by April 1. The Company stated that it would commence activities at its sole risk and expense after Charles City County approved. (Company Application at 11, 12-13.)

The Commission concludes that an applicant may commence activities of the type described by Chickahominy in advance of receiving Commission approval. Chickahominy proposes to commence grading the site to uniform elevation after the Company

⁴ The Restructuring Act retains the requirement that the Commission issue a certificate before constructing or operating other types of electric facilities.

§ 56-578. Nondiscriminatory access to transmission and distribution system.

E. Upon the separation and deregulation of the generation function and services of incumbent electric utilities, the Commission shall retain jurisdiction over utilities' electric transmission function and services, to the extent not preempted by federal law. *Nothing in this section shall impair the Commission's authority under §§ 56-46.1, 56-46.2, and 56-265.2 with respect to the construction of electric transmission facilities.* (emphasis added)

receives all necessary local approvals. The Company would limit its activities to those permitted by federal, state, and local law. No construction of a permanent structure or any construction-related activities that are integral to any emissions sources would be undertaken without Commission approval. (Id. at 11-13.) As Chickahominy acknowledged, it proceeds at its sole risk. The filing of this application does not relieve or excuse Chickahominy from complying with any statute, ordinance, or regulation affecting its proposed activity. It proceeds at the risk that the Commission might deny the application pursuant to § 56-580 D. The commencement of the activities described in the Company Application and the related expenditures will not deter the Commission from establishing conditions, if warranted and supported by the record developed in this proceeding, which would require abandonment or alteration of any work undertaken in advance of receipt of a certificate.

Accordingly, IT IS ORDERED THAT:

(1) Pursuant to §§ 56-46.1, 56-580 D, and related provisions of Title 56 of the Code of Virginia, Chickahominy's application be docketed as Case No. PUE010659, and all associated papers be filed therein.

(2) A public hearing be held on May 1, 2002, at 10:00 a.m. in the Commission's Courtroom, Second Floor, Tyler Building,

1300 East Main Street, Richmond, Virginia, to receive comments from members of the public and to receive evidence on the application.

(3) As provided by § 12.1-31 of the Code of Virginia and the Rules of Practice, 5 VAC 5-20-120, *Procedure before hearing examiners*, a hearing examiner be appointed to conduct all further proceedings in this matter on behalf of the Commission and to file a final report.

(4) On or before February 15, 2002, the Company may file with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, an original and fifteen (15) copies of any additional testimony and exhibits by which it expects to establish its case.

(5) On or before March 13, 2002, any person who expects to participate as a respondent shall file with the Clerk at the address set out in ordering paragraph (4) an original and fifteen (15) copies of a notice of participation as a respondent, as required by the Rules of Practice, 5 VAC 5-20-80 B, *Participation as a respondent*, and shall serve a copy on counsel to the Company, Thomas B. Nicholson, Esquire, Williams Mullen Clark & Dobbins, P.O. Box 1320, Richmond, Virginia 23218-1320, and on Commission Staff counsel assigned to the matter, Wayne N. Smith, Office of General Counsel, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23218-1197. The

notice of participation shall be filed and served as required by the Rules of Practice, 5 VAC 5-20-140, *Filing and service*, and 5 VAC 5-20-150, *Copies and format*. Any organization, corporation, or government entity participating as a respondent must be represented by counsel as required by the Rules of Practice, 5 VAC 5-20-30, *Counsel*.

(6) Within five (5) business days of receipt of a notice of participation as a respondent, the Company shall serve upon each respondent a copy of this Order, a copy of the application, and all materials filed with the Commission, unless these materials have already been provided to the respondent.

(7) On or before April 3, 2002, written comments on the Company's application may be filed with the Clerk at the address set out in ordering paragraph (4) and a copy mailed to counsel to the Company at the address in paragraph (5) above.

(8) On or before April 3, 2002, each respondent shall file with the Clerk an original and fifteen (15) copies of the testimony and exhibits by which it expects to establish its case and shall serve a copy of the testimony and exhibits on counsel to the Company and on all other parties. The respondent shall comply with the Rules of Practice, 5 VAC 5-20-140, *Filing and service*, 5 VAC 5-20-150, *Copies and format*, and 5 VAC 5-20-240, *Prepared testimony and exhibits*.

(9) The Commission Staff shall investigate the Company's application and consult with state agencies concerned with environmental protection. On or before April 17, 2002, the Staff shall file with the Clerk the testimony and exhibits it intends to present at the hearing and copies of any workpapers that support the recommendations made in its testimony. Copies of the testimony and exhibits shall be served on all parties.

(10) On or before April 24, 2002, the Company may file with the Clerk an original and fifteen (15) copies of all testimony and exhibits that it expects to offer in rebuttal to direct testimony and exhibits of the Commission Staff and respondents and shall serve one copy on all parties.

(11) The Rules of Practice, 5 VAC 5-20-260, *Interrogatories to parties or requests for production of documents and things*, shall be modified for this proceeding as follows: (i) answers and objections shall be served within fourteen (14) days after receipt of interrogatories, counting weekends and holidays; (ii) motions on the validity of any objections raised by answers shall be filed within five (5) business days of receipt of the objection; and (iii) answers, objections, and motions on the validity of objections shall be served by 3:00 p.m. of the due date, unless the Staff or party upon whom service must be made agrees in advance to other arrangements.

(12) Forthwith upon receipt of this Order, the Company shall make available for inspection during regular business hours copies of its application, testimony, exhibits, this Order, and all other materials filed in this proceeding at the Department of Development, County and School Board Administration Building, 10900 Courthouse Road, Charles City, Virginia.

(13) On or before February 20, 2002, the Company shall publish the following notice and a sketch map showing the location of the proposed facilities twice as display advertising (not classified) in a newspaper or newspapers of general circulation in Charles City County:

NOTICE TO THE PUBLIC OF AN APPLICATION BY
CHICKAHOMINY POWER, LLC,
FOR APPROVAL OF GENERATION FACILITIES IN
CHARLES CITY COUNTY
STATE CORPORATION CASE NO. PUE010659

On January 4, 2002, Chickahominy Power, LLC ("Chickahominy" or "Company"), filed with the State Corporation Commission its application for a certificate to construct and operate an electric generating facility in Charles City County. A description of the location follows:

On a tract of approximately 250 acres on Chambers/Landfill Road. The location is approximately 0.5 mile east of the intersection of Chambers/Landfill Road and Roxbury Road (Virginia Route 106).

A map showing the approximate location accompanies this notice.

The facility would consist of four combustion turbines with total nominal rating of approximately 665 MW and associated equipment. The Company proposes to use primarily natural gas as fuel, but the facility could also use Number 2 fuel oil. Chickahominy proposes to start clearing, grading, and compacting soil at the proposed site by April 1, 2002. Commercial operation would commence in the third quarter of 2003. According to the Company, the facility would operate as a merchant plant. It would not provide electricity or electric service to retail customers in Virginia.

A public hearing on the application for a certificate for the generating facilities will be held on May 1, 2002, at 10:00 a.m. in the Commission's Courtroom, Second Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, to receive comments from members of the public and evidence on the application.

The application may be inspected in the Commission's Document Control Center, Office of the Clerk of the Commission, First Floor, Tyler Building, 1300 East Main Street, Richmond, Virginia, during Commission business hours. Copies of the application may also be inspected during regular hours at the office of the Charles City County Department of Development, County and School Board Administration Building, 10900 Courthouse Road, Charles City, Virginia.

On or before March 13, 2002, any person who expects to participate as a respondent as provided by the Commission's Rules of Practice and Procedure, 5 VAC 5-20-80 B, shall file with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, an original and fifteen (15) copies of

a notice of intent to participate and shall serve a copy on counsel to the Company, Thomas B. Nicholson, Esquire, Williams Mullen Clark & Dobbins, P.O. Box 1320, Richmond, Virginia 23218-1320, and on Commission Staff counsel assigned to the matter, Wayne N. Smith, Office of General Counsel, State Corporation Commission, P.O. Box 1197, Richmond, Virginia 23218-1197. Any organization, corporation, or government entity participating, as a respondent must be represented by counsel as required by the Rules of Practice and Procedure, 5 VAC 5-20-30. The Commission's Order for Notice and Hearing gives the complete procedural schedule and instructions on participation in this case.

Any person not participating as a respondent may give oral testimony at the public hearing as a public witness. These persons should arrive at the hearing location at least 15 minutes before the start of the hearing and contact the Commission's Bailiff.

Individuals with disabilities who require an accommodation to participate in the hearing should contact the Commission at least seven (7) days before the scheduled hearing date at 1-800-552-7945 (voice) or 1-804-371-9206 (TDD).

On or before April 3, 2002, written comments on the Company's application shall be filed with the Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218-2118, and a copy mailed to counsel to the Company, Thomas B. Nicholson, Esquire, Williams Mullen Clark & Dobbins, P.O. Box 1320, Richmond, Virginia 23218-1320. Such comments must refer to Case No. PUE010659. Comments transmitted by e-mail or by facsimile are discouraged, and the Commission cannot guarantee that any

comments not in writing and filed with the Clerk will be considered.

A copy of the Order for Notice and Hearing may be obtained from the Clerk of the Commission. The unofficial text of the order may be viewed at the Commission's website: <http://www.state.va.us/scc/caseinfo/orders.htm>. The Rules of Practice and Procedure and other information may also be viewed on the website.

CHICKAHOMINY POWER, LLC

(14) On or before February 14, 2002, the Company shall serve a copy of this Order on the chairman of the board of supervisors of Charles City County, the Secretary of Natural Resources, the Director of the Department of Environmental Quality, and a representative of Virginia Natural Gas, Inc. Service shall be made by first-class mail or delivery to the customary place of business or residence of the person served.

(15) On or before March 15, 2002, the Company shall file with the Clerk proof of the newspaper publication and proof of service required by ordering paragraphs (14) and (15).